

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.03.2021

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.NPD.No.2280 of 2017

and

CMP.No.10745 of 2017

Bakthavatchalam

..Petitioner

Vs.

Ramalingam

..Respondent

PRAYER:

The Civil Revision Petition is filed under Section 115 of CPC against the fair and decretal order dated 10.02.2017 passed in E.A.No.37 of 2017 in EA.No.535 of 2016 in EP.No.378 of 2000 in OS.No.340 of 1994 on the file of the Principal District Munsif, Cuddalore.

For Petitioner : Mr.P.Mani

For Respondent : Mr.R.Muralidharan

ORDER

This civil revision petition is filed against the fair and decretal order dated 10.02.2017 passed in E.A.No.37 of 2017 in EA.No.535

of 2016 in EP.No.378 of 2000 in OS.No.340 of 1994 on the file of the Principal District Munsif, Cuddalore thereby dismissing the petition to restore the petition filed under Section 47 of CPC.

2. The petitioner is the defendant and the respondent is the plaintiff. The respondent filed suit for declaration and recovery of possession. Initially the suit was dismissed by the judgment and decree dated 05.03.1999. Aggrieved by the same, the respondent filed appeal suit in AS.No.78 of 1999 and the same was allowed on 31.08.2000 and it became final since the petitioner did not file any second appeal. On the strength of the decree, the respondent filed execution petition in EP.No.378 of 2000 on 01.12.2000. On perusal of the order passed by the court below revealed as follows:

a) This EP is of the year 2000. After a very long struggle counter was able to be filed only 18.07.2011. After hearing the petitioner when the matter was ripe for respondent side enquiry, a stay petition was filed. After giving sufficient opportunity since the respondent was not ready, the court posted the matter for pronouncing order on 02.12.2011. By that time, two applications under EA.No.406 of 2011 and EA.No.407 of 2011 were filed and those were dismissed. Again the matter was posted for pronouncing

orders on 30.10.2012. On that day, a petition to reopen was filed. That application under EA.No.363 of 2012 was dismissed. Once again the matter was posted for order and this time a petition to stay all further proceedings was filed. It was rejected on 05.04.2013 and on that day itself delivery was ordered.

b) All of a sudden under Order 21 Rule 97 was filed and that application under EA 341/2013 was dismissed on 04.08.2015. Once again delivery was ordered. Thereafter, a stay petition and a petition to recall the warrant were filed and those petitions were partly allowed to grant one month time. Meanwhile, since the respondent did not proceed to take any step, the petition itself was dismissed for default. As per order in EA.252 of 2016 the main execution petition was restored and this time a petition under Section 47 was filed in EA.535/2016. That petition was dismissed for default on 03.01.2017 and to restore the above said Section 47 application this petition has been filed.

3. Further revealed that after dismissal of the EA.No.341 of 2013 filed under Order 21 Rule 97 of CPC dated 04.08.2015, the petitioner filed petition under Section 47 of CPC on the ground that the decree itself inexecutable one since the first appellate court has no jurisdiction to decree the suit. It is pertinent to note here that those grounds were not raised before the first appellate court. Even after decreeing the suit in the appeal suit, the petitioner failed to prefer any second appeal as against

the judgment and decree passed in AS.No.78 of 1999 dated 31.08.2000. Having failed before the first appellate court, the petitioner ought to have filed an appeal before this Court. Without doing so, after 15 years from the date of execution petition, the petitioner filed petition under Section 47 of CPC, that too on the ground that the first appellate court had no jurisdiction to pass judgment and it is inexecutable decree. In this regard, the learned counsel for the respondent relied upon the judgment in the case of **Shantilal Kothari Vs. Sathrasala Venkatram (since deceased) Shatrasala Sharathbabu** reported in **2020-1-LW.561**, wherein this Court held as follows:

21. The dictum laid down in the above judgments would clearly show that the Executing Court cannot sit as an appellate authority to declare the judgment passed by the Court as nullity and inexecutable and the Executing Court has to execute the decree as it is.

22. From the facts of the case on hand, it is clear that the grounds raised by the appellant, have already attained finality and action under the guise of claim under Section 47 CPC, cannot be raised by filing an application under Section 47 CPC. The decision rendered in the earlier proceedings, is binding between the parties. Therefore, we are of the opinion that there is absolutely no infirmity in the impugned order passed by the learned Single Judge warranting this

Court to make interference in these O.S.As. Accordingly, the O.S.As. are dismissed. In view of the dismissal of the O.S.As., as discussed above, we are not traversing into the other submissions made by the learned counsel for the appellant.

The Hon'ble Division of this Court held that the executing court cannot sit as an appellate court to declare the judgment passed by the court as nullity and inexecutable one.

4. In the case on hand, on perusal of the petition filed under Section 47 CPC revealed that the decree itself is inexecutable since the first appellate court had no jurisdiction to decree the suit. As such the above judgment is squarely applicable to the present case on hand. That apart, normally the court should allow the petition to restore the suit after dismissal for default. Whereas in the case on hand, as stated supra, the petitioner dragged the execution petition for 20 years by filing the petition after petition including the present civil revision petition and as such the petitioner only to drag the execution petition, he willfully and wantonly allowed the court below to dismiss his petition for default. Therefore, the court below rightly dismissed the petition and as such this Court finds no irregularity or infirmity in the order passed by the court below.

5. Accordingly, this civil revision petition is dismissed. The execution court is directed to dispose of the execution petition within a period of eight weeks from the date of receipt of copy of this order. Consequently, connected miscellaneous petition is closed. No order as to costs.

26.03.2021

Speaking/Non-speaking order
Index : Yes/No
Internet : Yes/No
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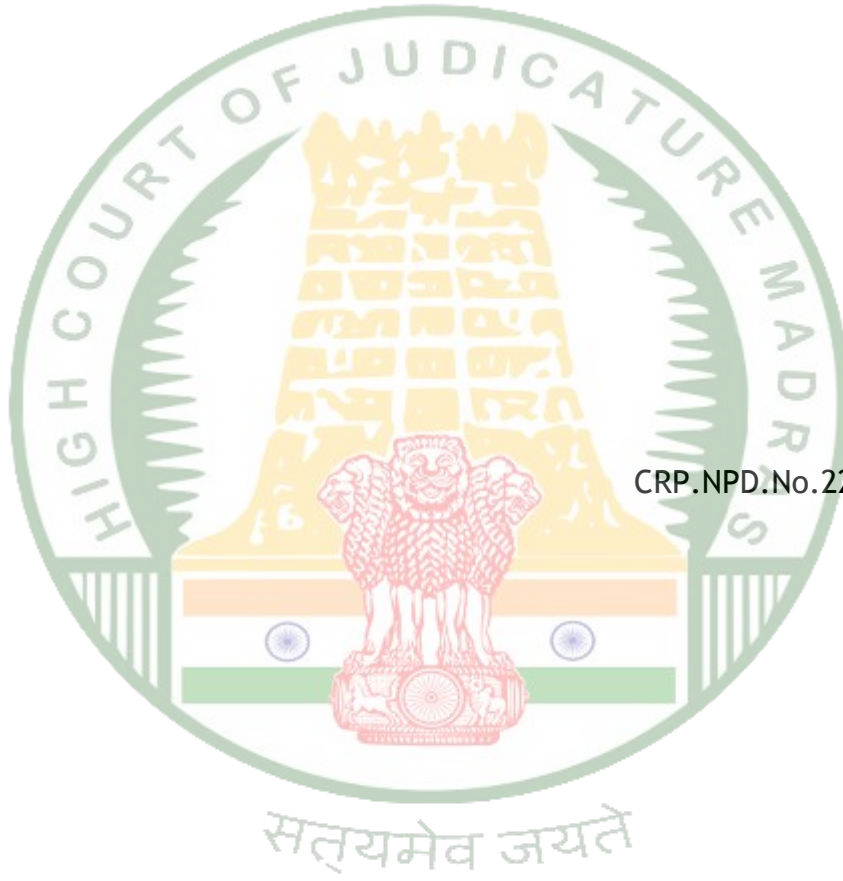
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Cuddalore.



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G.K.ILANTHIRAIYAN,J.

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